IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Chandra. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1078/2005 against the order dated 24-9-2003 passed by the Judicial Magistrate, Jayal, district Nagaur, in Criminal Case No. 208/2003.

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Date of Order: October 26, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. J.S. Choudhary, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Ravindra Acharya, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 24-9-2003 passed by the Judicial Magistrate, Jayal, district Nagaur (for short, "the trial Court" hereinafter) in Criminal Case No. 208/2003, whereby the trial Court took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) and issued the process against the petitioner.

Non-petitioner No.2 Chaina Ram filed a complaint against the petitioner under Section 138 of the Act stating

therein that the petitioner took a loan of Rs.5 lac from him and issued a cheque for Rs.5,85,000/- on 15-7-2002. On presentation of the cheque in the bank on 29-8-2002, it was returned with the remarks of "insufficient funds" in the account of the petitioner. The non-petitioner sent a registered notice dated 28-9-2002 demanding payment of the cheque amount but the notice was received back with the endorsement that the petitioner had gone abroad and thereafter the complaint was filed on 9-10-2002.

Heard learned counsel for the parties. Perused the order impugned.

The only point argued by the learned counsel for the petitioner is that the notice demanding the cheque amount within fifteen days from the date of receipt of the notice was sent to the petitioner by the complainant/non-petitioner No.2 on 28-9-2002, though the notice was not received by the complainant and it was returned with the endorsement that the petitioner has gone abroad and thereafter the complaint was filed on 09-10-2002. According to the learned counsel for the petitioner, on 09.10.2002, no cause of action arose to the complainant/non-petitioner No.2 to file the complaint under Section 138 of the Act and, therefore, the order impugned taking cognizance on the complaint without there being a cause of action, is bad in law.

From a perusal of the material available on record, it

appears that the complaint was filed before arising of the cause of action. However, even if the cause of action having accrued to the complainant/non-petitioner on expiry of the period of fifteen days of notice, the petitioner failed to pay the cheque amount. What is required under proviso (c) to Section 138 of the Act is that for construing an offence under Section 138 of Act, if the drawer of cheque fails to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice, then the day next to 15th day is the date of cause of action to the complainant for launching the prosecution.

In the instant case, indisputably the complaint was filed before the cause of action arose to the complainant, but since even after fifteen days from the date of the notice, the petitioner failed to pay the cheque amount, therefore, it cannot be said that on this ground alone, the order taking cognizance is required to be set aside. Even if the period of fifteen days is taken from any date, which according to the learned counsel for the petitioner is the date of expiry of the notice period, then also the order taking cognizance is dated 24-9-2003 and, therefore, the cognizance has been taken by the trial Court on the complaint having attained maturity.

In Narsingh Das Tapadia Vs. Goverdhan Das Partani

& Anr., AIR 2000 SC 2948, the Hon'ble Supreme Court held as under:-

> "The failure of drawer of cheque to make payment of the cheque within 15 days of receipt of notice of the payee enables the Court to entertain a complaint. Clause (b) of Section 142 prescribes a period within which the complaint can be filed form the date of the cause of action arising under clause (c) of the proviso to Section 138. No period is prescribed before which the complaint cannot be filed and if filed not disclosing the cause of action in terms of clause (c) of the proviso to Section 138, the Court may not take cognizance till the time the cause of action arises to the complainant."

Keeping in view the decision of the Hon'ble Supreme Court in Narsingh Das Tapadia Vs. Goverdhan Das Partani & Anr. (supra) and the fact that the cognizance has been taken by the trial Court on attaining maturity of the complaint, in my view, the order taking cognizance cannot be faulted, warranting interference in the inherent jurisdiction. In the circumstances, therefore, no case for interference in the inherent jurisdiction is made out.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs